

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
AT CINCINNATI**

**CIVIL ACTION NO. 11-698-MRB-JGW**

**BILLY ROGERS**

**PLAINTIFF**

**V.**

**WARDEN KERNS, et al.**

**DEFENDANTS**

**REPORT AND RECOMMENDATION<sup>1</sup>**

Plaintiff filed this pro se civil rights action in the United States District Court for the Northern District of Florida in January 2010. Doc. 1. Because plaintiff did not submit either the filing fee or a motion to proceed in forma pauperis with his complaint, United States Magistrate Judge Allan Kornblum ordered plaintiff to either pay the filing fee, file a motion to proceed in forma pauperis, or to file a notice of voluntary dismissal. Doc. 3. Judge Kornblum further directed the Clerk of Court to send plaintiff an application to proceed in forma pauperis. *Id.* In March 2010, Senior District Judge Maurice Paul noted that plaintiff had not complied with Judge Kornblum's order and, accordingly, ordered plaintiff to show cause why this action should not be dismissed. Doc. 4.

Plaintiff responded to the show cause order by stating that he had not received the application to proceed in forma pauperis. Doc. 6. Judge Paul then ordered the Clerk of Court to again send the forms to plaintiff. Doc. 7. In April 2010, plaintiff submitted a document stating that he could not read well and asked the Court to appoint an attorney to represent him. Doc. 8. Plaintiff

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<sup>1</sup>Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

did not submit an application to proceed in forma pauperis or the filing fee. On April 6, 2010, Judge Paul ordered the action transferred to this Court because plaintiff's complaint stemmed from actions taken by staff at the Southern Ohio Correctional Facility. Doc. 9. For reasons not apparent from the record, the Clerk of this Court did not receive the record from Florida until October 2011. Doc. 12.

On November 18, 2011, this Court gave plaintiff one final chance to either file a motion to proceed in forma pauperis or to pay the filing fee. Doc. 13. The Court noted that it could have properly dismissed the action for lack of prosecution at that time. However, due to the unusual transfer of this action and the inexplicable delay in accomplishing that transfer, the Court gave plaintiff a final thirty-day extension of time to either: a) pay the filing fee; or b) file a properly supported motion to proceed in forma pauperis; or c) file a notice of voluntary dismissal of his claims. The Court explicitly noted that it would recommend that the presiding district judge dismiss the action if plaintiff failed to timely and adequately respond to the order.

On November 25, 2011, the Court's November 18, 2011 order was returned with a notation that plaintiff had been released from custody in June 2010. Doc. 14. No further action has been taken and more than thirty days has elapsed since the Court gave plaintiff one final thirty-day extension of time.

Plaintiff has failed to keep the Court informed as to his current address and has failed to either pay the filing fee or to file a motion to proceed in forma pauperis. I recommend, therefore, that this action be dismissed for lack of prosecution. *See, e.g., Gravitt v. Tyszkiewicz*, 14 Fed.Appx. 348, 349 (6<sup>th</sup> Cir. 2001); *In re Prison Litigation Reform Act*, 105 F.3d 1131, 1132 (6<sup>th</sup> Cir. 1997).

**IT IS RECOMMENDED:**

This action should be dismissed for lack of prosecution.

This 21<sup>st</sup> day of December, 2011.

s/ J. Gregory Wehrman  
J. Gregory Wehrman  
United States Magistrate Judge

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**NOTICE**

Attached hereto is the Report and Recommendation of the Honorable J. Gregory Wehrman, United States Magistrate Judge. Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations **within 14 days** after being served with this Report and Recommendation. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections **within 14 days** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).